

CITY-COUNTY GENERAL ORDINANCE NO. 44, 1984
METROPOLITAN DEVELOPMENT COMMISSION
DOCKET NO. 84-AO-4

ADULT ENTERTAINMENT BUSINESS
ZONING ORDINANCE
IN
MARION COUNTY, INDIANA

METROPOLITAN DEVELOPMENT COMMISSION

1984

Officially adopted
July 9, 1984

CITY-COUNTY GENERAL ORDINANCE NO. _____

METROPOLITAN DEVELOPMENT COMMISSION

DOCKET NO. 84-AO-4

AN ORDINANCE to amend Marion County Council Ordinance No. 8-1957, as amended, the Zoning Ordinance for Marion County, Indiana, and fixing a time when the same shall take effect.

ADULT ENTERTAINMENT BUSINESS ORDINANCE

NOW THEREFORE, BE IT ORDAINED BY THE CITY-COUNTY
COUNCIL OF THE CONSOLIDATED CITY OF INDIANAPOLIS
AND OF MARION COUNTY, INDIANA

SECTION 1. Repealer. That sections 1(A)(3), 1(A)(4) and 1(E)(1) of the COMMERCIAL SPECIAL EXCEPTIONS ZONING ORDINANCE OR MARION COUNTY, INDIANA (Ordinance 76-AO-2) are hereby specifically repealed.

SECTION 2. Amendment. That Marion County Council No. 8-1957, adopted by the Marion County Council on March 28, 1957, and subsequently amended and all zoning ordinances adopted as parts thereof, as amended, be further amended to read as follows:

SECTION 3. Intent and Purpose

In the development and adoption of this ordinance, it is recognized that there are some adult business uses which due to their very nature have serious objectionable operational characteristics particularly when located in close proximity to residential neighborhoods, thereby having a deleterious impact upon property values and the quality of life in such surrounding areas. It has been acknowledged by communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The special

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regulations deemed necessary to control the undesirable externalities arising from these enterprises are set forth below. The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods, to deter the spread of urban blight and to protect minors from the objectionable operational characteristics of these adult uses by restricting their close proximity to churches, parks, schools and residential areas.

SECTION 4. Definitions

- A. "Adult Bookstore" shall mean an establishment having as a preponderance of its stock in trade or its dollar volume in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- B. "Adult Cabaret" shall mean a nightclub, bar, theatre, restaurant or similar establishment which frequently features live performances by topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas and/or which regularly feature films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

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- C. "Adult Drive-In Theater" shall mean an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.
- D. "Adult Entertainment Business" shall mean an adult bookstore, adult motion picture theater, adult mini motion picture theater, adult motion picture arcade, adult cabaret, adult drive-in theater, adult live entertainment arcade or adult service establishment.
- E. "Adult Live Entertainment Arcade" shall mean any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances or other gyrational choreography which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.
- F. "Adult Mini Motion Picture Theater" shall mean an enclosed building with a capacity of more than 5 but less than 50 persons, used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are

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distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

- G. "Adult Motel" shall mean a hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- H. "Adult Motion Picture Arcade" shall mean any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.
- I. "Adult Motion Picture Theater" shall mean an enclosed building with a capacity of 50 or more persons used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified

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anatomical areas for observation by patrons therein.

- J. "Adult Service Establishment" shall mean any building, premises, structure or other facility, or any part thereof, under common ownership or control which provides a preponderance of services involving specified sexual activities or display of specified anatomical areas.
- K. "Agricultural Zoning District" shall include the A-1 and A-2 Zoning District.
- L. "Church Zoning District" shall include the SU-1 Zoning District.
- M. "Enlargement" shall mean an increase in the size of the building, structure or premises in which the adult entertainment business is conducted by either construction or use of an adjacent building or any portion thereof whether located on the same or an adjacent lot or parcel of land.
- N. "Establishing an Adult Entertainment Business" shall mean and include any of the following:
 - (a) the opening or commencement of any such business as a new business;
 - (b) the conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein;
 - (c) the addition of any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or

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- (d) the relocation of any such business.
- O. "Historic Preservation Zoning District" shall include the HP-1 and HP-2 Zoning District.
- P. "Integrated Center" shall mean a building containing a number of individual, unrelated and separately operated uses which share common site facilities and services such as driveway entrances and exits, parking areas, truck loading, maintenance, sewer and water utilities, or similar common facilities and services; or one or more buildings containing individual, unrelated and separately operated uses, occupying a site under one ownership or management for lease, and utilizing one or a combination of the aforementioned common site facilities or services.
- Q. "Nonconforming Adult Use" shall mean any building, structure or land lawfully occupied by an adult entertainment business or lawfully situated at the time of passage of this ordinance or amendments thereto, which does not conform after the passage of this ordinance or amendments thereto with the regulations of this ordinance.
- R. "Park Zoning District" shall include the PK-1 or PK-2 Zoning District.
- S. "Reconstruction" shall mean the rebuilding or restoration of any nonconforming adult use which was damaged or partially destroyed by an exercise of the power of eminent domain, or by fire, flood, wind, explosion or other calamity or act of God if the damage or destruction exceeds two-thirds (2/3) of the value of the structure or the facilities affected.

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- T. "Residential Zoning District" shall include D-S D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10, D-11, D-12 and D-P Zoning Districts.
- U. "Resumption" shall mean the reuse or reoccupation of a nonconforming adult use which has been discontinued for a period of six or more consecutive months.
- V. "School Zoning District" shall include the SU-2 Zoning District.
- W. "Services Involving Specified Sexual Activities or Display of Specified Anatomical Areas", as used in subsection J, shall mean and include any combination of two or more of the following activities:
 - (1) the sale or display of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas;
 - (2) the presentation of films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons;
 - (3) the operation of coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines,

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projectors or other image producing devices to show images to five (5) or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas;

(4) live performances by topless and or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas;

(5) the operation of a massage school, massage parlor, massage therapy clinic, bathhouse, escort service, body painting studio or nude modeling studio, as these terms are defined in Section 17-725 of the Code of City of Indianapolis, and any amendments thereto.

X. "Specified Anatomical Areas" shall mean and include any of the following:

(a) less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or

(b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Y. "Specified Sexual Activities" shall mean and include any of the following:

a. human genitals in a state of sexual stimulation or arousal;

b. acts of human masturbation, sexual intercourse or sodomy;

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- c. fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts;
 - d. flagellation or torture in the context of a sexual relationship;
 - e. masochism, erotic or sexually oriented torture, beating or the infliction of pain;
 - f. erotic touching, fondling or other such contact with an animal by a human being; or
 - g. human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in "a" through "f" above.
- Z. "Structural Alteration" shall mean any change which would prolong the life of the supporting members of a building or structure such as bearing walls, columns, beams or girders, except such changes as are ordered made pursuant to the provisions of the Unsafe Building Law, IC 36-7-9-1, and any amendments thereto.

SECTION 5. Prohibitions

The establishment, enlargement, reconstruction, resumption or structural alteration of any adult entertainment business shall be prohibited if such business is within 500 feet of two other such businesses or within 500 feet of any existing church zoning district, school zoning district, park zoning district, agricultural zoning district, historic preservation zoning district or residential zoning district within Marion County, Indiana.

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Provided further, that no adult entertainment business shall be established, enlarged, reconstructed, resumed or structurally altered unless the site or proposed site is located in a C-4 (Community-Regional Commercial) zoning district, C-5 (General Commercial) zoning district, C-6 (Thoroughfare Service) zoning district, C-7 (High Intensity Commercial) zoning district or C-ID (Commercial-Industrial) zoning district.

Provided further, that no adult entertainment business shall be established, enlarged, reconstructed, resumed or structurally altered in a C-4 (Community-Regional Commercial) zoning district unless the site or proposed site is located within an integrated center.

SECTION 6. Measurement of Distances

The distance between one adult entertainment business and another adult entertainment business shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of each such business. The distance between an adult entertainment business and any church, school, park, agricultural, historic preservation, or residential zoning district shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall to the adult entertainment business to the nearest property line of the church, school, park or residential zoning district. If any adult entertainment business is part or included within an integrated center, only the portion of said center or leased space occupied by such adult entertainment business shall be included in determining the closest exterior structural wall of said establishment.

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SECTION 7. Exterior Display

- A. No adult entertainment establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public way.
- B. "Number of Signs" Not more than one business wall sign shall be permitted for an adult entertainment business and said sign shall be permitted only on the front facade. In addition to the one permitted business wall sign, an adult entertainment business not located within an integrated center shall be permitted not more than one pole or ground sign structure if it is an entity of commercial development held in either private ownership or long-term lease, and which meets all of the requirements of the zoning district in which it is located. Such requirements shall include direct access to a public street from that property and a full amount of required parking on the site with the use. All other sign structures shall be prohibited.
- C. "Sign Surface Area" The sign surface area of a business wall sign for an adult entertainment business shall not exceed an amount equal to five percent (5%) of the front building facade of the first floor elevation (first 10 feet) of the premises occupied by the adult entertainment business, or one hundred (100) square feet, whichever is the lesser. The maximum sign surface area of a ground or pole sign structure, where permitted, shall not exceed one square foot for each lineal foot of frontage of the lot, or thirty-six (36) square feet, whichever is the lesser.

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- D. "Lighting" Signs and sign structures may be illuminated, provided, however, such illumination shall not be by way of exposed neon, exterior lighting (e.g., spot or flood lights), or any flashing or animated lights (either interior to the sign, on the exterior of the sign, or as a border to the sign).

SECTION 8. Continuation of Nonconforming Use

The lawful use of land or buildings existing at the time of the adoption of this ordinance may continue although such use does not conform to the regulations specified herein, subject to the provisions set forth in Section 5 above.

SECTION 9. Severability

If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect other ordinance provisions or clauses or applications thereof which can be implemented without the unconstitutional or invalid provision, clause or application, and to this end the provisions and clauses of this ordinance are declared to be severable.

SECTION 10. Effective Date

An emergency exists for the passage of this ordinance and the same shall be in full force and effect from and after its passage.

NOW BE IT FURTHER ORDAINED that an emergency exists for the passage of this ordinance and that the same shall be in full force and effect from and after this date.

DATED: July 9, 1984

ATTEST: Beverly S. Rippey
(Clerk)

CITY-COUNTY COUNCIL OF INDIANAPOLIS
AND OF MARION COUNTY, INDIANA

Beurt SerVaas
President